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# ON HEROES AND IDEALISTS<sup>1</sup>

DANIEL J. MCMULLEN<sup>2</sup>

On the morning of Saturday, October 22, 1994, I was driving into downtown Cleveland listening to WCPN. Scott Simon, one-time Clevelander, was sharing with America's public radio audience the tale of racial and ethnic tolerance at Cleveland Heights High School. His story was riveting. Upon reaching my destination, I could not turn the radio off, transfixed by the voices of young men and women, their parents, their teachers, their neighbors—OUR neighbors—Asian, Black, Hispanic, White—telling their stories, their hopeful answers to that pained question of whether we all can't somehow learn to just get along. A wonderful example, I thought. Truly a lesson for all seasons, especially for *our* community.

And on this autumn Saturday, one laden with bittersweet irony for myself and many others gathering at St. John's Cathedral. For on this very morning, former Chief Judge Frank J. Battisti of the United States District Court for the Northern District of Ohio—the personification of this community's highest aspirations to racial tolerance and understanding—was eulogized as a man who "suffered willingly the arrows of public fury, a martyrdom in pursuit of justice for children," and was laid to rest.

Black students and parents who petitioned federal courts for justice in the 1950s, 60s and 70s did not live in communities that were willing to pursue the difficult and unpopular course of trying to integrate neighborhoods and schools. In cities like Cleveland, schools were made and kept strikingly segregated by many forces. And those who proved that segregation unconstitutional demanded it be remedied. Some twenty years before, in *Brown v. Board of Education*, the Supreme Court declared that "Equal Protection" (a phrase authored a century earlier, in the aftermath of Mr. Lincoln's War to save not merely the Union, but the nation's soul) proscribed that convenient fiction of "separate but equal"; it meant *desegregated* schools.

Frank Battisti and other unlikely heroes were asked whether America would honor its Constitutional promise. Like judicial colleagues in Boston, Denver and throughout the South, Judge Battisti answered in the face of hatred, vilification, threats to life and safety (against himself and his family) and relentless attack from a community that did not want to be reminded of that

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<sup>1</sup>"I say to you in all sadness of conviction, that to think great thoughts you must be heroes as well as idealists." Oliver Wendell Holmes, Jr., *The Profession of the Law*, in COLLECTED LEGAL PAPERS BY OLIVER WENDELL HOLMES 32 (1920).

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Constitutional promise. The luxury of hindsight may allow us to question some of the methods employed. But it also compels us to admit that there was a recent time in America when countless minority children seeking to attend public schools free of racial discrimination and segregation had little more than the strength and commitment to duty of judges like Frank Battisti on which to rely. For many difficult years, Judge Battisti wore the personal burden of that duty as he wore his judicial robe—with dignity and humility.

None of which is intended to conjure up a myth—Judge Battisti was neither saint nor innocent. A favorite utterance, acknowledging that the rough-and-tumble mixture of law and politics he knew so well did not always work like the civics books said, was his own discreet confession: "I didn't just fall off a Christmas tree, you know."

Frank Battisti grew up during hard times in a hard town. Youngstown, Ohio, in the throes of the Great Depression taught some tough lessons, and many—like the importance of personal loyalty, and devotion to Church and family—stayed with Judge Battisti a lifetime. Following his tour of duty as an infantryman in Europe during the Second World War, formal education (undergraduate degree at Ohio University, law degree at Harvard Law School) and a stint in Washington, Judge Battisti returned to Youngstown to practice law and politics in the urban-Democratic-labor milieu of a steel town in the post-War boom. Those years also ushered in a new American era, captured in the phrase "civil rights," and fear and prejudice simmered close to the surface in such cities.

In hindsight, recognizing how much those influences suffused his conception of the law and his role as a judge, one can scarcely imagine Frank Battisti hailing from anywhere *but* Youngstown, Ohio. He always remembered where he came from and reflected it proudly and without apology. While federal judges must preserve a certain distance from the legal community they serve, one sensed at times that Judge Battisti's indifference to the country club sensibilities of much of Cleveland's legal community added to that distance.

Those who knew only the media's caricature of Judge Battisti would scarcely have recognized the warm, gregarious and unfailingly gracious individual who welcomed so many visitors into his chambers. Rarely did one escape without a discussion with—or, frequently, a soliloquy from—the Judge on one (or more) of his Favorite Subjects (not necessarily in the following order): Politics (strongly Democratic, with the Camelot days of the Kennedys featured, and the matter-of-fact recounting of the many prominent names who had presented themselves in those chambers to pay their respects); Fly Fishing ("I was making my way up the North Fork of the Bitterroot [or Rock Creek or the Yellowstone, etc.], working a little Yellow-Bellied Goofus on a 4-pound line, when a big old Brownie ..."); World War II (five campaigns, from hedgerow fighting on D-Day plus 6 to "the Breakthrough," better known to those of us who just *read* history as the Battle of the Bulge); Catholicism (usually preceded by a too-earnest disclaimer that he was not proselytizing, with the trial of Thomas More and "When will the Anglicans 'come back'?" as especially favored topics). Generations of the Judge's law clerks could recite extemporaneously on any of those subjects, with an aside on the virtues of Italian Heritage or a lengthier exposition on Judicial Independence added for

Those familiar with the affable and solicitous side of the Judge could be taken aback when he flayed an unfortunate attorney in open court for an unwitting offense or, in the privacy of his chambers, let loose some choice invective (immediately followed by an apology, especially for the benefit of any women present) directed at uncooperative forces failing to align themselves with the Judge's view of the world. In the end, it should probably come as no surprise that Judge Battisti, like many of his colleagues on the bench (an occupational hazard?), was quite capable of both.

As a compassionate human being, Frank Battisti's animated and generous personality touched deeply and indelibly the lives of those close to him. As a passionate jurist, Judge Battisti's long and distinguished career stands as a public legacy of heroic idealism. The body of opinions he authored not only represent his contribution to judicial scholarship, but also reflect a personal commitment to exercise the authority of his office on behalf of those least considered and most vulnerable in the society he knew. Beyond my personal sadness at his passing, I grieve for the community's loss of that rare individual in public life truly devoted to something larger than himself, who stood—sometimes alone—for an America ideal.

